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(U.S. 5,650,157).

Claim 1 is directed to an absorbent article for absorbing body waste. The article comprises a permeable liner having a body-facing surface oriented for facing a wearer when the absorbent article is worn and an absorbent-facing surface opposite the body-facing surface, an outer cover, an absorbent body positioned between the liner and the cover for absorbing body waste penetrating the liner, and a Yucca species extract positioned between the body-facing surface of the liner and outer cover.

Roe et al. disclose an absorbent article with improved management of viscous fluid bodily wastes. The absorbent article comprises a liquid pervious topsheet, a liquid pervious backsheet joined to at least a portion of the topsheet, an absorbent core disposed between at least a portion of the topsheet and the backsheet, and a waste management element disposed in at least a portion of the crotch region. The waste management element is capable of effectively and efficiently accepting, storing, and/or immobilizing viscous fluid bodily waste. The waste management element preferably includes a storage element, which optionally includes a multiplicity of discrete particles. Furthermore, the particles may optionally include a lotion.

As noted by the Office, Roe et al. fail to teach a lotion comprising a Yucca species extract. In an attempt to find each and every element of claim 1 as required by the M.P.E.P. for a determination of *prima facie* obviousness, the Office cites the Bockow reference for combination with Roe et al.

Bockow discloses pharmaceutical topical compositions containing stabile deodorized oil compositions which exhibit enhanced penetration properties and achieve enhanced patient

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response. The improved topical pharmaceutical compositions may be used to manage pain and/or to treat the underlying ailments. The stable, deodorized oils may be prepared by adding an amount of a deodorizing agent effective to substantially reduce the odor of the derived oil composition. In one optional embodiment, the composition may comprise Yucca.

In establishing a *prima facie* case of obviousness to render a claim unpatentable, M.P.E.P. §2142 requires, *inter alia*, that the Office must show some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings to arrive at Applicants' claim. The mere fact that the references can be combined or modified to arrive at the claimed subject matter does not render the resultant combination obvious, unless the prior art also suggests the desirability of the combination. In re Mill, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). A close reading of the cited references clearly indicates that one skilled in the art would not have been so motivated and, without Applicants' disclosure as a blueprint (which the Office had the benefit of utilizing), such a combination of the Roe et al. and Bockow references would not have been made.¹

¹M.P.E.P. §2142 further provides that in order to reach a proper determination under 35 U.S.C. §103, the Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. Knowledge of Applicants' disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences." The tendency to resort to "hindsight" based upon Applicants' disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

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As discussed throughout Applicants' specification, the absorbent article contains a urease inhibitor, the Yucca species extract, to reduce the production of ammonia from urine.² This reduction will lead to a decrease in the incidence of diaper rash and further will reduce offensive odors. As noted above, Roe et al. fail to teach or suggest a Yucca species extract in an absorbent article. Bockow fails to overcome the shortcomings of Roe et al., as discussed below.

Bockow does disclose Yucca in a laundry list of 11 optional components, which may be added to its pharmaceutical topical compositions.³ Additionally, Bockow does disclose diaper rash as one of the 34 exemplary ailments that may be treated using one of its topical compositions. However, nowhere does Bockow provide a nexus between using the optional component of Yucca to treat the specific ailment of diaper rash. Therefore, in order to arrive at Applicants' claim 1, one skilled in the art must pick and choose from a myriad of options in the Bockow reference, without any teaching or suggestion as to which option to choose to combat which ailment. Notably, one skilled in the art would have had to choose to add an optional component to the topical composition, would have had to choose to add Yucca as the optional component, and would have had to choose to use the topical composition with the optional Yucca component in the absorbent article of Roe et al. for the treatment of diaper rash. All of this must be done, despite the fact that Bockow fails to disclose any absorbent articles and in numerous places in his

²See instant specification at page 1, lines 1-7 and page 24, line 31 to page 26, line 6.

³Bockow at column 13, lines 21-34.

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specification, states that his compositions are suitable for topical use.⁴ No where does Bockow suggest placing its topical composition into an absorbent article. Specifically, why would one skilled in the art be motivated to use Bockow's topical composition in an absorbent article? Bockow discloses enhanced penetration as one major advantage of its topical composition.⁵ As such, the topical composition might well be completely absorbed by the absorbent layers of an absorbent article. In short, one skilled in the art, without the benefit of Applicants' disclosure, would have had to make at least three optional combinations to arrive at Applicants' claim 1; at least three optional combinations crossing two references. Additionally, and significantly, Applicants note that of the 10 exemplary compositions made in the working Examples of the Bockow reference, not one of them includes Yucca as an optional component. Additionally, none of them are directed at treating diaper rash.

Thus, one skilled in the art reading the Bockow reference would not be motivated to put the topical composition (comprising the optional Yucca extract) of Bockow into an absorbent article, such as that disclosed in Roe et al., to arrive at Applicants' claim 1. As such, claim 1 is patentable over Roe et al. in view of Bockow.

Claims 12-18, 24-27, and 33-34 depend directly or indirectly from claim 1. As such, these claims are patentable for the same reasons as claim 1 stated above, as well as for the additional

⁴For example, see Bockow at column 4, lines 51-56, column 6, lines 12-15, and column 12, lines 21-26.

⁵Id. at column 10, lines 15-17.

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elements they require.

Claim 35 is similar to claim 1 and is further directed to a method of inhibiting the production of ammonia from urine held adjacent a wearer's skin by an article. The method comprises applying a composition including a Yucca species extract to the article. As such, claim 35 is patentable for the same reasons as claim 1 stated above, as well as for the additional elements it requires.

Claims 36-42 depend directly or indirectly from claim 35 and are patentable for the same reasons as claim 35, as well as the additional elements they require.

2. Rejection of Claims 19-23 and 28-32 Under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claims 19-23 and 28-32 under 35 U.S.C. § 103(a) as being unpatentable over Roe et al. in view of Bockow, and further in view of Henderson (U.S. 6,228,265).

Claim 19 depends from claim 1 and further requires the Yucca species extract to comprise Yucca schidigera. Claim 1 is patentable for the reasons set forth above. Applicants note that claim 1 has not been rejected in view of Roe et al., Bockow, and Henderson under 35 U.S.C. §103(a). Therefore, claim 19, which depends from claim 1, is patentable for the same reasons as claim 1 set forth above. In particular, the cited art fails to disclose or suggest Yucca schidigera (or any Yucca species extract) in an absorbent article to reduce the production of ammonia from urine. Claims 20-23 and 28-32 depend directly or indirectly from claim 1 and are patentable for the same reasons as claim 1, as well as for the additional elements they require.

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The Roe et al. and Bockow references are discussed above. Further, as discussed above, there is no motivation or suggestion to combine Roe et al. and Bockow to arrive at each and every limitation of Applicants' invention. Thus, the Office cites Henderson for combination with the Roe et al. and Bockow references in an attempt to find each and every limitation of Applicants' invention. Henderson, However, fails to overcome the shortcomings of both the Roe et al. and Bockow references.

Henderson discloses a bio-enhancing composition for stimulating the metabolism of a microorganism comprising a carbohydrate and at least 0.01% by weight of a saponin. Preferably the composition comprises Yucca extract. And, it is particularly preferred that the Yucca extract is *Yucca schidigera*.

No where, However, does Henderson suggest using the *Yucca schidigera* in an absorbent article to reduce the production of ammonia from urine, or for any other purpose. Specifically, the composition of the Henderson reference was designed to be used environmentally. For example, the reference specifically states that the invention was designed to be used in the acceleration of bacterial metabolism to degrade oil spills and dispose of waste in recycling plants.⁶ No one skilled in the art, reading Henderson, would be motivated to use the *Yucca schidigera* containing composition in an absorbent article that contacts the skin of an infant. The disclosure of Henderson is simply unrelated to the subject matter of claim 19.

As such, there is no motivation to combine Roe et al. with Bockow and Henderson to arrive at each and every limitation of

⁶See Henderson at column 1, lines 62-67.

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Applicants' claim 19. As such, claim 19 is patentable over the cited references.

Claims 20-23 and 28-32 are similar to claim 19 in that they require the Yucca species extract of claim 1 to be Yucca schidigera. As such, they are patentable for the same reasons as claim 19 stated above, as well as for the additional elements they require.

3. Rejection of Claims 1-6, 12, 14-18, and 33-34 Under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claims 1-6, 12, 14-18, and 33-34 under 35 U.S.C. § 103(a) as being unpatentable over Ciraldo et al. (U.S. 4,623,339) in view of Bockow.

Claim 1 and the Bockow reference are discussed above.

Ciraldo et al. disclose a disposable diaper consisting of a pouch on the inner surface of the interior liner at the crotch portion of the diaper. The pouch contains lotion/ointment therein and has a plurality of minute perforations. When an adhesive strip is removed from the perforations, the lotion/ointment will come out onto the skin of the baby while the diaper is worn.

As noted by the Office, Ciraldo et al. fail to teach a Yucca species extract composition. In an attempt to find each and every element of claim 1 as required by the M.P.E.P. for a determination of *prima facie* obviousness, the Office cites the Bockow reference for combination with Ciraldo et al.

As noted above, in establishing a *prima facie* case of obviousness to render a claim unpatentable, M.P.E.P. §2142 requires, *inter alia*, that the Office must show some suggestion

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or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings to arrive at Applicants' claim. A close reading of the references clearly indicates that one skilled in the art would not have been so motivated and, without Applicants' disclosure as a blueprint, such a combination of the Ciraldo et al. and Bockow references would not have been made.

As previously discussed herein, Ciraldo et al. fail to teach or suggest a Yucca species extract in an absorbent article. Further, Bockow fails to overcome the shortcomings of Ciraldo et al., as Bockow fails to provide a suggestion or motivation for using its topical compositions containing a Yucca species extract in an absorbent article for treating or preventing diaper rash.

As discussed previously, one skilled in the art, without the benefit of Applicants' disclosure, would have had to make at least three optional combinations from the Bockow reference and then combine that with another reference to arrive at Applicants' claim 1. That is, one skilled in the art would have had to add an optional component to the Bockow topical composition, would have had to choose to add Yucca as the optional component, and would have had to choose to use the composition with the optional Yucca component in the absorbent article of Ciraldo et al. for the treatment of diaper rash. Neither Ciraldo et al. nor Bockow suggest such combinations. As such, claim 1 is patentable over Ciraldo et al. in view of Bockow.

Claims 2-6, 12, 14-18, 24-27, and 33-34 depend directly or indirectly on claim 1. As such, these claims are patentable for the same reasons as claim 1 stated above, as well as for the additional elements they require.

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4. Rejection of Claims 7-11, 19-23, and 28-32 Under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claims 7-11, 19-23, and 28-32 under 35 U.S.C. §103(a) as being unpatentable over Ciraldo et al. in view of Bockow, and further in view of Henderson.

Claim 7 depends from claim 1 and further requires the *Yucca* species extract to comprise *Yucca schidigera*. Claim 1 is patentable for the reasons set forth above. Claim 1 is not rejected in view of the Ciraldo et al., Bockow, and Henderson references under 35 U.S.C. §103(a). Therefore, claim 7, which depends indirectly from claim 1, is patentable for the same reasons as claim 1 above. In particular, the cited art fails to disclose or suggest *Yucca schidigera* (or any *Yucca* species extract) in an absorbent article to reduce the production of ammonia from urine. Claims 8-11, 19-23, and 28-32 also depend directly or indirectly from claim 1 and are patentable for the same reasons as claim 1, as well as for the additional elements they require.

The Ciraldo et al., Bockow, and Henderson references are discussed above. Further, as discussed above, there is no motivation or suggestion to combine Ciraldo et al. and Bockow to arrive at each and every limitation of Applicants' invention. Therefore, the Office cites Henderson for combination with the Ciraldo et al. and Bockow references. However, Henderson fails to overcome the shortcomings of both the Ciraldo et al. and Bockow references.

As discussed previously herein, no where does the Henderson reference suggest using the *Yucca schidigera* in an absorbent article to reduce the production of ammonia from urine.

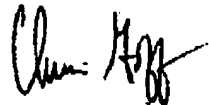
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Specifically, as noted previously herein, Henderson expressly states that the preferred uses of its composition are the acceleration of bacterial metabolism for degrading oil spills and disposing of waste in recycling plants. As such, no one skilled in the art would add the *Yucca schidigera* of Henderson to the topical composition of Bockow for use in an absorbent article, such as is found in Ciraldo et al. Thus, there is no motivation to combine Ciraldo et al. with Bockow and Henderson to arrive at each and every limitation of Applicants' claim 7. As such, claim 7 is patentable over the cited references.

Claims 8-11, 19-23 and 28-32 are similar to claim 7 in that they require the *Yucca* species extract of claim 1 to be *Yucca schidigera*. As such, they are patentable for the same reasons as claim 7 stated above, as well as for the additional elements they require.

In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. The Commissioner is hereby authorized to charge any fee deficiency in connection with this Letter to Deposit Account Number 19-1345 in the name of Senniger, Powers, Leavitt & Roedel.

Respectfully Submitted,



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